

**AGENDA:** May 13, 2003

**9.2**

**CATEGORY:** Items Initiated by Council

**DEPT.:** City Council

**TITLE:** Background Information on the U.S.A.  
Patriot Act (PL 107-56)

### **RECOMMENDATION**

Consider the provisions of the U.S.A. Patriot Act (PL 107-56) and the actions of neighboring jurisdictions in order to make a decision about whether or not to take a position in opposition to the Act.

### **FISCAL IMPACT**

There is no fiscal impact. However, the City could incur expenses related to increased surveillance operations and activities related to the U.S.A. Patriot Act (Act) that are not reimbursed by the Federal government.

### **BACKGROUND AND ANALYSIS**

At the February 11, 2003 Council meeting, I first voiced my concerns regarding the U.S.A. Patriot Act. Based on apparent interest by other Councilmembers to learn more about the Act, I have prepared this report.

The United States Congress enacted the U.S.A. Patriot Act (PL 107-56) on October 26, 2001 in response to the September 11, 2001 terrorist attacks on the United States. A summary of the Act, drafted by the Congressional Research Service of the Library of Congress, is included as Attachment 1. However, due to the size of this document, it has not been included with this report. The full text of PL 107-56 is available on-line at the Library of Congress THOMAS legislative information system at <http://thomas.loc.gov>. Copies of PL 107-56 are also available in the City Clerk's Office and the Mountain View Public Library.

### **Summary**

The Act includes provisions on criminal laws, transporting hazardous materials, money laundering and counterfeiting, investigations and information sharing, Federal grants, victims, immigration and domestic security. It also expands electronic surveillance laws.

Specifically, the Act:

1. Creates several new crimes, like bulk cash smuggling and attacking mass transportation systems;
2. Expands prohibitions involving biological weapons and possession of biological agents and toxins;
3. Lifts the statute of limitations on prosecuting some terrorism crimes;
4. Increases penalties for some crimes;
5. Requires background checks for licenses to transport hazardous materials;
6. Expands money laundering laws and places more procedural requirements on banks;
7. Promotes information sharing and coordination of intelligence efforts;
8. Provides Federal grants for terrorism prevention, antiterrorism training, preparation and response to terrorist acts and criminal history information systems;
9. Broadens the grounds for denying aliens admission to the U.S. based on their involvement with terrorism; and
10. Alters some domestic security provisions, such as allowing the Attorney General to ask for the military's assistance during an emergency involving weapons of mass destruction and allowing the Department of Defense to contract with state or local governments for temporary security at military facilities.

The Act requires that the Department of Justice (DOJ) Inspector General receive complaints about civil liberties and civil rights abuses by the DOJ and report these complaints to Congress. It requires telemarketers soliciting charitable contributions to disclose the purpose of their call and make other disclosures that the Federal Trade Commission considers appropriate. The Act also requires various reports as specified in the Act. These include studies of how certain provisions in the Act are working, whether additional legislation is needed and how technology can assist antiterrorism efforts.

### **Background**

The U.S.A. Patriot Act was enacted to address concerns about the threat of terrorism in this country. Since the Act was enacted, a number of government entities, organizations and

individuals—including cities in the Bay Area, organizations such as the American Civil Liberties Union and the American Library Association and Senator Russell Feingold (D-Wisconsin)—have raised concerns that some of the Act's provisions have and could be implemented in such a manner as to threaten or impinge upon rights and liberties guaranteed by the U.S. Constitution and its Bill of Rights and the California Constitution, including the protected freedoms of speech, religion, assembly and privacy; the rights to due counsel and process in judicial proceedings; and protection from unreasonable searches and seizures.

Among other things, various cities and counties in California have raised the following concerns regarding the Act:

- Defines "domestic terrorism" broadly, allowing it to potentially apply to certain acts of civil disobedience conducted by lawful advocacy groups and may subject these groups to surveillance, wiretapping, harassment and criminally penalize them for protected political advocacy activities.
- Gives the Federal Bureau of Investigation (FBI) and Central Intelligence Agency (CIA) greater authority to wiretap telephones; monitor electronic mail; survey sensitive medical, mental health, financial and educational records without having to show evidence of a crime and without meaningful judicial review; and enter and search homes and offices without prior notification.
- Expands the Attorney General's powers to detain individuals suspected of terrorist activities.

A number of jurisdictions across the country have adopted resolutions or statements opposing portions of the U.S.A. Patriot Act and certain U.S. Department of Justice directives and executive orders regarding implementation of the Act's provisions. California cities and counties that have adopted such resolutions or policy statements include: Yolo County, West Hollywood, San Francisco, Arcata, Fairfax, Oakland, Sebastopol, Santa Cruz, Berkeley and others. Based on conversations with the Assistant to the City Manager of Palo Alto, Palo Alto's Human Relations Commission is preparing to take a position in opposition to the Act in the near future. A complete list of the positions of jurisdictions within California is attached for the City Council's review (Attachment 2). The League of California Cities does not have a position on the Patriot Act.

The National League of Cities (NLC) does not have a position on the Patriot Act as a whole; however, they are opposed to the unfunded mandates and increased liability risks involved in the Act. Based on conversations with analysts at the NLC, they may take a position in opposition to the Act as a whole in the near future. Police chiefs from NLC member organi-

zations have come out in support of the wiretap section. The NLC is in support of a provision that provides that the cities or counties can seek reimbursement for costs from the FBI's Joint Terrorism Task Force if they are asked by the Federal government to participate in activities related to the Act. However, there is no specific funding available to local government entities in the Act other than reimbursement for actions specifically requested by the Federal government. Additionally, the NLC is concerned about the portion of the bill that relates to libraries.

### **CONCLUSION**

Based on the information provided above and in the attached summary, the City Council could choose to pursue one of the following options:

1. The City Council could take a position in opposition to the Patriot Act.
2. The City Council could take no action/position relative to the Patriot Act.
3. The City Council could take a position in support of the Patriot Act.
4. The City Council could refer this issue to the City's Human Relations Commission for a recommended action/position.

### **PUBLIC NOTICING**—Agenda posting.

Prepared by:

Matt Neely  
Councilmember

MN/JP/9/CAM  
607-05-13-03M-E-3^

- Attachments:
1. Summary of U.S.A. Patriot Act, Drafted by the Congressional Research Service of the Library of Congress
  2. Chart Indicating Actions Taken by Other Jurisdictions in California
  3. List of Entities Opposing the U.S.A. Patriot Act Drafted by the American Civil Liberties Union (ACLU)